IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

MFA.No. 890 of 1996()

OPMV.1648/1991 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM
.....

APPELLANT - PETITIONER:

V.P. SURESH BABU, VATTATHOTTIYIL HOUSE, LEKHSMICOIL P.O., IDUKKI DISTRICT.

BY ADV. SRI.L.MOHANAN
SRI.D.SAJEEV

RESPONDENTS - RESPONDENTS:
----

1. A. RAJAMANICKAM, T.C. 24/740, KUMAR RANGE, THYCAUD, THIRUVANANTHAPURAM.

2. THE MANAGER, NATIONAL INSURANCE CO. LTD.

BY ADV. SRI.JOHNSON P.JOHN R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

==========

M.F.A. NO. 890 OF 1996

==========

Dated this the 27th day of September, 2007

J U D G M E N T

Petitioner in O.P(MV) No.1648 of 1991 on the file of the Motor Accidents Claims Tribunal, Thiruvananthapuram, is the appellant. Appeal is filed against the award passed by the Tribunal dismissing the petition filed by the petitioner claiming compensation.

2. Petitioner, who was a driver of an Autorikshaw bearing Reg.No.KBT-8397, filed the petition claiming compensation of Rs.1,00,000/- against his owner and Insurer. It was averred that while he was driving the Autorikshaw on 27.3.1991 it capsized on account of the defective tyres and he sustained injuries. Owner remained ex parte. Insurer alone contested the case. It was contended that the accident occurred solely due to the negligence of the petitioner himself and as such he is not entitled to get any compensation. Petitioner gave evidence as P.W.1. He deposed that at about 6.30 p.m. on 27.3.1991 he was driving the Autorikshaw towards Vazhuthacaud from Thycaud. He further deposed

that when a car came from the opposite side he applied brake and on account of the sudden action, the vehicle skidded and dashed against a compound wall. According to the appellant the accident occurred due to the bad condition of the tyres. He also deposed that the owner did not maintain the vehicle properly.

3. Petitioner did not produce any material in support of his case. The only record produced in respect of the accident was Exhibit A4, the Scene Mahazar. There is absolutely nothing on record to show that the accident occurred due to the bad condition of the tyres. The appellant who was the driver of the vehicle should have taken steps to change the defective tyres. He cannot be allowed to take advantage of his own wrong. The Tribunal took a view that the petitioner failed to establish the case. That is a finding of fact based on good evidence and I do not find any ground to interfere with the said finding. The appeal is without any merit and the same is only to be dismissed.

In the result, appeal is dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

==========

M.F.A. NO. 890 OF 1996

==========

J U D G M E N T

27TH SEPTEMBER, 2007